

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JASON M. JONES,

Plaintiff,

vs.

DOROTHY NASH HOLMES, et al.,

Defendant.

3:11-cv-00047-LRH-WGC

ORDER

re Defendants' Motion to Strike

Doc. # 74

Before the court is Defendants' "Motion to Strike Plaintiff's [Proposed Amended] Complaint (Court Docket 67)." (Doc. # 74.)¹ Plaintiff has opposed the motion. (Doc. # 74.) No reply was filed.

On or about January 10, 2014, Plaintiff filed a document entitled "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." (Doc. # 67.) No case number was inserted into this form document. The last page of the document included a handwritten note (Doc. # 67-1) to the "Clerk of Court" which at the bottom noted, in the same handwriting:

**THANK YOU
and can I amend
my complaint w/ this one**

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(*Id.*; emphasis added)

Defendants' motion (Doc. # 74) reviews the intricate history of this case. Defendants reference the court's March 20, 2013 scheduling order (Doc. # 32) which set a deadline for amending the pleadings or joining additional parties of 60 days from the date of the order (May 20, 2013). Defendants argued

¹ Refers to court's docket number.

1 Plaintiff's "motion" was untimely.

2 Any proposed amendment of a pleading is supposed to be effected by motion. Local Rule 15-1.
3 Even liberally interpreting Plaintiff's letter to the clerk as constituting a motion, and disregarding the
4 timeliness issue for now, the Plaintiff's request does not provide the court sufficient information to be
5 able to evaluate the propriety of Plaintiff's proposed amended complaint.

6 More specifically, the action is currently pending against named defendants Romeo Aranas,
7 Isidro Baca, Cheryl Burson, James "Greg" Cox, Roland Daniels, Jerry Howell, Paula Miller, Umair
8 Moten, Dwight Neven, Francisco Sanchez, William Tate, Kay Weiss, Brian Williams, Sr., Connor Wolf,
9 Cole Morrow, Howard Skolnik and David Mumford. The underlying action asserts a myriad of claims
10 for retaliation, improper classification, denial of medical care, supervisory liability, etc. See, generally,
11 Screening Order, Doc. # 19.

12 The proposed 64 page amended complaint (Doc. # 67) identifies defendants Warden Neven,
13 Nurse Greene, James _____ (nurse), Nicole _____ (nurse), Kelly _____ (nurse) and (in the caption)
14 "H.D.S.P. Medical Staff, numerous Correctional Officers to be named & Clark County Detention
15 Center, Univ. Medical Center, Defendants." (*Id.*, at 1-3.) None of these parties are defendants in the
16 current proceeding. Generally speaking, the subject matter of Plaintiff's filing (Doc. # 67) pertains to
17 an alleged denial of medical care.

18 Following the filing of Defendants' motion to strike Plaintiff's proposed amended complaint
19 (Doc. #74), Plaintiff filed his opposition (Doc. # 75). In contradiction to his letter (Doc. # 67-1) which
20 asked the clerk to "amend [his] complaint with this one" (i.e., Doc. # 67), Plaintiff now states his
21 submission was supposedly *not* intended to effect an amendment of his existing complaint but to be a
22 *new* action:

23 Court Docket 67 was never intended for an Amended Complaint. It was
24 supposed to be filed as a new 42 USC 1983 Complaint.
(Doc. # 75 at 1.)

25 At page 2 of his opposition, plaintiff states, again,

26 I would like the following Document please and my 42 USC 1983 dated
27 Jan. 10th 2014 submitted by itself not as a amended complaint. It was
never intended for that. * * *

28 (*Id.*)

1 Accepting Plaintiff's latest characterization of Doc. #67 as being a new complaint and not an
2 attempt to amend Plaintiff's existing complaint, good cause appears to **STRIKE** Doc. # 67 from the
3 docket in this matter (although not necessarily for the reasons stated in Defendants' motion (Doc. # 74),
4 which was filed before Plaintiff clarified the characterization of his submission). However, in the event
5 of an appeal, the record should retain this document to explain the confusion which Plaintiff has created.

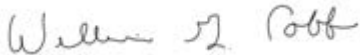
6 The Clerk of Court shall nonetheless re-file Plaintiff's civil rights complaint (Doc. # 67) as a new
7 action. However, because no filing fee was paid nor was an Application to Proceed *in forma pauperis*
8 submitted, Plaintiff shall have **thirty (30) days up to and including March 24, 2014**, to submit a
9 completed Application to Proceed *in forma pauperis* or pay the filing fees. The Clerk shall send to
10 Plaintiff the appropriate form Application to Proceed *in forma pauperis*.

11 Plaintiff is advised that his failure to timely comply with this order will result in a
12 recommendation that the new action which is filed as a result of this order be dismissed.

13 Defendants' motion (Doc. # 74) is **DENIED** as moot.

14 **IT IS SO ORDERED.**

15 **DATED: February 21, 2014.**

16 
17 WILLIAM G. COBB
18 UNITED STATES MAGISTRATE JUDGE
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